

Agenda Item # 3
May 15, 2018

Consideration of a Draft Cease and Desist Order
and Order Imposing Administrative Civil Liability
against

Stornetta Family Trust and Newton Dal Poggetto (Trustee)

Enforcement Action Background

- Originated from the Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy)
- Notification letters sent to approximately 350 land owners
- Eleven land owners, including Stornetta, did not respond or did not respond adequately
 - Staff issued draft cease and desist orders and administrative civil liability complaints

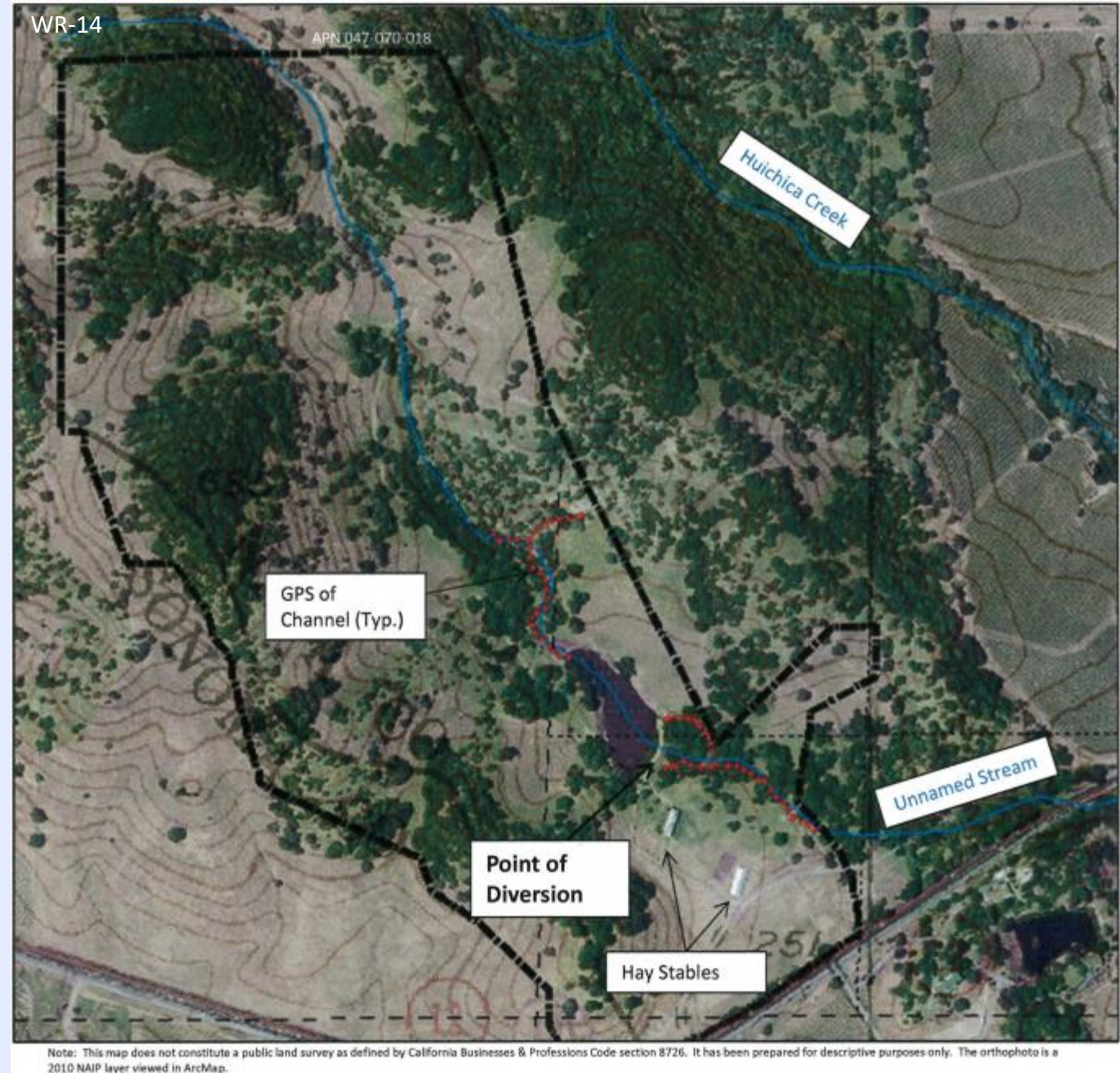
WR-28



PROJECT LOCATION / POLICY AREA

Figure 1 Geographic Area Affected by the Policy

WR-14



WR-14



Figure 30: Reservoir as seen from the southeast corner looking north. Earthen dam runs northeast along the right of the photo.

Hearing, Draft Order, and Comments

- Stornetta requested a hearing, which was held on September 2, 2014, Stornetta and the Division of Water Rights Prosecution Team participated
- Draft Order was released for public comment on April 3, 2018
- Two comments were received by the May 4, 2018 deadline:
 - Stornetta
 - Prosecution Team

Response to Comments - Stornetta

- Stornetta requested that the \$75,000 fine be reduced
- Response: Timely compliance with the CDO will limit the liability to \$30,000

Response to Comments - PT

- Prosecution Team requested clarification whether days of impoundment are considered in calculating maximum liability
- Response: Water Code section 1052 defines a trespass as the unauthorized diversion or use of water. Ongoing storage of water does not constitute a diversion. Days of impoundment can be considered in determining the appropriate amount of liability within the range authorized.
- **Hearing Team does not propose any changes to the Draft Order**

Consideration of Draft Order - CDO

- Adoption of the Draft Order would:
 - 1. Require Stornetta to cease and desist the continued and threatened unauthorized diversion and use of water and take certain corrective actions within a specified time schedule, either by:
 - a. Obtaining a livestock stockpond registration by:
 - reducing the reservoir's capacity to ≤ 10 acre-feet
 - installing an outlet pipe
 - b. Rendering the dam incapable of impounding water

Consideration of Draft Order - ACL

- In addition, adoption of the Draft Order would:
 - 2. Impose administrative civil liability against Stornetta in the amount of \$75,000. Of this amount:
 - \$30,000 would be due and payable immediately
 - \$15,000 would be suspended upon completion of a compliance plan with no more than one revision
 - \$30,000 would be suspended upon complete and timely implementation of the compliance plan

Questions?

Summary of Enforcement Action ACLs

Case Name	Estimated Reservoir Size (af)		Prosecution Team Pre-Hearing Proposed ACL (\$)*	Final ACL (\$)	Decision Notes
	Initial	Revised			
Ivey	0.34		8,000	8,000	Settlement
Coleman	5.8	1	9,900	6,000	Settlement
Temple	1.6		6,300	6,300	Settlement
Giese and Coulingh	1.6	2.5	6,300	5,300	Settlement
Dawood	8.4	2.8	12,100	10,000	Settlement
Gwaltney	5.3		7,400	5,000	Settlement
Chandler and Amendola	9.5		13,000	0	Complaint Withdrawn
GRR Vineyard LLC	12.6		15,700	9,000	Settlement
Donovan & Peters	31†		40,000	40,000	Default Judgement
Stornetta	21	24.2	22,800	TBD	ACL Order After Hearing
Mann	183		66,000	125,000	ACL Order After Hearing

* The Prosecution Team pre-hearing proposed ACL does not represent the maximum potential liability for the case.

† Combined capacity of two reservoirs.